

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**EVELIN JOSEFINA PEREZ,**

**S**

A minor,

Case No. 25-CV-13931 RJW

Petitioners,

v.

**KEVIN RAYCRAFT**, Acting Field Office  
Director of Enforcement and Removal  
Operations, Detroit Field Office, Immigration  
and Customs Enforcement; **KRISTI NOEM**,  
Secretary, U.S. Department of Homeland  
Security; U.S. DEPARTMENT OF  
HOMELAND SECURITY; **PAMELA BONDI**,  
U.S. Attorney General; EXEC OFFICE FOR  
IMMIGRATION REVIEW.

Respondents.

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GEORGE B. WASHINGTON  
(P 26201)  
SCHEFF & WASHINGTON  
24525 Southfield Rd—Ste 270  
Southfield, MI 48075  
313-963-1921  
313-715-4886 C  
[scheff915@gmail.com](mailto:scheff915@gmail.com)

ZAK TOOMEY (MO61618)  
Assistant U.S. Attorney  
211 W. Fort St., Ste. 2001  
Detroit, MI 48226  
(313) 226-9617  
[Zak.Toomey@usdoj.gov](mailto:Zak.Toomey@usdoj.gov)

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**PETITIONERS' BRIEF IN RESPONSE TO THE  
RESPONDENTS' BRIEF IN OPPOSITION TO THEIR  
REQUEST FOR A WRIT OF HABEAS CORPUS**

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## STATEMENT OF FACTS

### A. The arrest and detention of Evelin Perez and her son S

The Petitioners Evelin Josefina Perez and her son S

are citizens of Venezuela who fled to escape the persecution that they and many others have faced in that country. On November 14, 2024, they applied for admission to the United States at the border crossing station in San Ysidro, California. The US border officials did not conduct a “credible fear” interview pursuant to Section 1225(b) nor did they make any finding on whether there was any such fear. Instead, acting the authority of 8 U.S.C.,1182(d)(5) they granted the Petitioners a humanitarian parole allowing them to enter and remain in the United States until November 13, 2026 and issued a Form I-94 which allowed them to apply for a permit to work in this country (Ex 1). The border officials also handed the Petitioners a Notice which charged them with being present in the U.S. without proper documentation and informed them that they had to attend a hearing in Detroit, Michigan on July 17, 2026 on the Government’s Petition to Remove them from the United States (Pet. Ex’s 1, 2; ECF No. 1,Page ID.23-32).

The Petitioners then crossed the border and travelled to Detroit where Ms. Perez found employment at a local hospital and her son enrolled at Western International High School in Detroit. On April 16, 2025, Ms. Perez filed an

Application for Asylum for herself and for her son (who was not yet an adult) on the basis of a detailed account [REDACTED]

[REDACTED] (Pet. Ex. 4, ECF No. 1, Page ID.37-40). For the next eight months, Department of Homeland Security (DHS) did not notify Ms. Perez and her son of the cancellation of their parole or of any change in it.

But on December 7, 2025, a local police officer stopped Ms. Perez and her son as they drove home from a social event in the suburbs. The officer claimed to have stopped them due to a defective taillight and because they were impeding traffic by driving too slowly, but after detaining them, he called the US Customs and Border Patrol. The CBT arrived, took Ms. Perez and her son into custody, and transported them to the US Border Patrol station on East Jefferson in Detroit.

At 8:15 the next morning, Immigration Control and Enforcement (ICE) took custody over them and transported them to various facilities, ending up at Metropolitan Airport where Ms. Perez and her son were placed on a Southwest airlines flight, in the custody of two ICE officers, that left Detroit at approximately 3:45 P.M. on December 8. After changing planes in Washington. ICE transported Ms. Perez and her son Santiago to a DHS detention facility in Dilley, Texas, where they are being held today (Stipulation, ECF No. 7, Page ID.99-101).

**B. The Trump policies that led to arrest, confinement and threatened deportation of Evelin and S ██████████**

From the point of view of the Petitioners, their detention resulted from a seemingly chance encounter with local police officers over a minor traffic matter. From the point of the Trump Administration, however, their detention was part of its self-proclaimed plan to carry out “largest mass deportations in US history.”

As a central part of that plan, the Administration announced that it would implement the expedited removal process specified in 8 U.S.C. s. 1225 to the maximum extent possible. The Administration did so because it could arrest and detain persons without affording a right to bail, thus forcing many to withdraw their claims for asylum and other relief and to accept voluntarily departure rather than face long detention by the DHS. In addition, as described by this Court in *Pizzaro-Reyes v. Raycraft*, 2025 WL 2609425, at \*4 (E.D. Mich. 2025), the Administration knew that immigrants confined to jail would have less ability to establish a claim for asylum because they would have less “access to attorneys, witnesses, evidence and even basic technology” than immigrants who were free on bond under the removal procedures in 8 U.S.C. s. 1226.

To implement their plan, the Administration claimed that every immigrant who had entered without inspection (and thus millions of people) were “applicants seeking admission” to the United States and thus subject to arrest, mandatory

confinement, and removal under Section 1225. This Court and hundreds of others decisively rejected that claim by holding that proceedings under Section 1226 were the “default rule” for “aliens already present in the United States” and that Section 1225 applied only to those who were physically “arriving” at the border and who were, quite literally, seeking admission to the United States. See *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (ED Mich 2025), citing *Jennings v. Rodriguez*, 583 U.S. 281, 287, 289 (2018). This Court’s decision was one of the hundreds that so held. See list of decisions attached to the Petition (ECF No. 1, Page ID.45-59) as updated by Judge Linda Parker in *Khogiani v. Raycraft*, 2025 WL 3684539 (ED Mich. Dec. 18, 2025). But even after the almost unbroken string of defeats in those cases, the Administration has continued to insist that immigrants who entered without inspection and lived far from the border are still subject to expedited removal.

In fact, the Administration has claimed, and still claims, that it can force those who entered *on parole and thus with the permission of DHS* into Section 1225 proceedings. The DHS, however, recognized that it would be difficult to sustain that position and so began to cancel paroles. Thus, in a Memo issued on January 23, 2025, Benjamine Huffman, the Acting Secretary of the DHS, reminded agency personnel of the Administration’s effort to expand “expedited removal to the statutory maximum” and urged them to “review” the cases of anyone who had been

placed in parole to determine “whether parole remains appropriate in light of any changed legal or factual circumstances” (Ex. 2)(hereafter, “the Huffman Memo”).

On March 25, the Administration moved from hints to commands. In a notice published in the Federal Register, Secretary Kristi Noem ordered the DHS to terminate by April 24, 2025 the paroles that it had given over the last two years to approximately 530,000 Cubans, Haitians, Nicaraguans, and Venezuelans except for (a) those who had attained a “lawful immigration status or other basis that permits them to remain in the United States...” and (b) for those whom the Secretary may prescribe are entitled to remain “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” See DHS, “Termination of Parole Processes for Cubans, Haitians and Nicaraguans,” 90 Fed. Reg. 13611, at 13612, 13618-13619 (March 25, 2025)(Ex. 3). As the Notice stated, DHS cancelled paroles in part to prevent those persons from having their claims for asylum and other changes in status adjudicated with the due process guarantees set forth in 8 U.S.C. s. 1226 because such proceedings would result in “straining the already overburdened immigration court system.” *Id.*, at 13619.

Noem’s Memo led directly to the arrest and detention of the Petitioners. Although the Perez’s had received no notice that their parole had been cancelled, the CBP apparently cancelled it when it saw that they had been detained due to the assertedly defective taillight. And the CBP officers then arrested the Petitioners,

hastily forced them onto a flight to Texas, and has confined them to a prison camp in Texas ever since. **In fact, the Administration is pushing forward by establishing hearings on the expedited removal proceeding before this Court can rule on this Petition for Habeas Corpus (Resp. Br., ECF No. 10-6 and 10-7; Page ID.142-145).**

## ARGUMENT

### **I. THE RESPONDENTS' PROCEDURAL OBJECTIONS TO THE PETITION ARE WITHOUT MERIT.**

In this action, the Petitioners challenge their arrest and confinement because it violates the Immigration and Nationalities Act and the Constitutional prohibition on denying persons liberty without due process of law. For almost three centuries, a Petition for a Writ of Habeas Corpus has been the classic means to challenge such unlawful confinements. Yet the Respondents claim that provisions of the expedited removal state deprive this Court of jurisdiction to challenge their arrest and confinement (Resp. Br. at 5-8; ECF No. 10, Page ID.116-119). The short answer to that claim is that the Sixth Circuit has directly held that “aliens detained by the INS can petition for writs of habeas corpus under 28 U.S.C. § 2241—whether they are detained pursuant to the pre-1996 statutory regime, the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), or IIRIRA.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 394 (6th Cir. 2003)(en banc).

As for exhaustion, this Court held in *Pizzaro Reyes* that it may, but is not required to, order the Petitioners to exhaust their remedies with the DHS. *Shearson v. Holder*, 725 F. 3d 588 (6<sup>th</sup> Cir. 2013). As in *Pizzaro Reyes*, the Petitioners ask this Court to waive exhaustion of administrative remedies because (1) the legal issues are fit for resolution; (2) the Petitioners have faced significant hardship by being detained far from their employment, education, family and friends, (3) there is no realistic prospect that the Administration will grant them relief.

Most importantly, the Petitioners cannot prepare an adequate presentation of their asylum claim while detained in Texas—and yet the DHS authorities in Texas have already scheduled a calendar hearing on the Petitioners' case for February 3 and 5, 2026 in which they could take actions that would be difficult to reverse (Resp. Br., ECF No. 10-6 and 10-7; Page ID.142-145).

**Because of the seeming determination of Texas DHS officials to press ahead with the expedited removal petition against the Petitioners, Petitioners ask this Court to render a decision on this matter as soon as possible and to issue an order which maintains the status quo by prohibiting the Respondents in Texas from scheduling removal proceedings before this Court has a chance to rule on this petition because otherwise the Respondents might take actions that would be difficult to undo.**

**II. THE DHS VIOLATED SECTION 235(b)(1)(iii) OF THE IMMIGRATION AND NATIONALITIES ACT, 8 U.S.C. s. 1225(b)(1)(iii), BY ARRESTING, DETAINING AND DENYING BAIL TO PETITIONERS WHO HAD ENTERED THE UNITED STATES UNDER A PAROLE ISSUED BY THE DHS.**

**A. The Respondents wrongly claim that the Petitioners are “arriving aliens applying for admission” and thus subject to expedited removal under 8 U.S.C. s. 1225(b)(1).**

In *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), the United States Supreme Court held that the removal procedures established in 8 U.S.C. s. 1226, which include the right to a bond, are the “default rule” which governs attempts to remove “aliens already present in the United States,” while Section 1225(b)(1) and (2) established a processing and inspection system that applies to those “at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.”

The text of the two statutes amply confirms that description. By its words, Section § 1226(a) applies to any noncitizen “already in the country” who is arrested “on a warrant . . . pending a decision on whether [they are] to be removed from the United States.” 8 U.S.C. § 1226(a). In contrast, Section 1225 focuses on inspecting people who are arriving at or have just entered the United States by establishing procedures for “inspection[s]” of people “arriving in the United States,” 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d); by repeatedly referring to “examining immigration officer[s],” *id.* § 1225(b)(2)(A), (b)(4); and by applying its terms to “stowaways,

“crewm[e]n,” and noncitizens who are “arriving from contiguous territory.” *Id.* § 1225(a)(2), (b)(2)(B), (b)(2)(C).

But despite *Jennings* and the words of the two statutes, the Administration has over the course of the last year arrested tens hundreds of thousands of immigrants far from the border and has detained and filed expedited removal petitions against them because, it said, they were still “applicants seeking admission to the United States”—even though many had lived in this country for decades in areas that were thousands of miles away from the border that they crossed over a year ago.

In *Pizzaro Reyes*, this Court detailed the utter unreality of DHS’s claims. Mr. Pizzaro Reyes was not an applicant seeking admission at the border of the United States, as contemplated by Section 1225, but was instead a person who had lived in the country. To be sure, he had not been lawfully admitted to the United States, and thus Government could lawfully remove him. But to do so, it had to file a Petition under Section 1226 where Mr. Pizzaro Reyes would have the right a bond and the ability to present in the best way possible any claims that he might as to his right to remain in the United States. *Pizzaro Reyes*, 2025 WL 2609425, at \*4, 7, 9. Three hundred other district courts ruled in similar fashion and the number and urgency of those rulings continues to grow. See *supra*, at 4.

But after all that, the Respondents claim that the Petitioners, who have lived in Detroit for over a year and were arrested there for a traffic offense, somehow again

became “a non-citizen arriving in the United States” and thus subject to removal under 8 U.S.C. s. 1225(b)(1) because they had been paroled through the border at San Ysidro over a year ago (Resp. Br., at 9, ECF No. 10, Page ID.120). Of course, the DHS did not subject the Petitioners to Section 1225 screening when they actually crossed in 2024 or when they were fictionally transported back to the border after their arrest in 2025 because all it cares about is mandatory detention.

In reality, the Petitioners in this case are in the same position as Mr. Pizarro Reyes and others were when the courts granted their petition for habeas relief—except that the Petitioners in this case crossed the border lawfully while almost all those in the prior proceedings entered without inspection. According to the Respondents, however, the Petitioners have less rights than those who crossed unlawfully based on the legal fiction that parolees are legally returned to the border when their parole expires or is cancelled. But nothing in the words of Section 1225(b)(1) adopts the entry fiction, or even suggests that a person who entered on parole, lived in the U.S. for a year, and then is arrested for a traffic offense is transported back to the border where he again becomes an arriving non-citizen.

There is, however, another subsection of Section 1225 which directly addresses the question of whether persons who entered on parole are subject to later removal under Section 1225—and as we will show in the next section, it makes clear

that persons who entered on parole may not be subject to proceedings under Section 1225 even if the parole that they received has expired or been cancelled.

**B. 8 U.S.C. s. 1225(b)(1)(iii) prohibits the DHS from filing expedited removal proceedings against persons who were paroled into the United States.**

In *Pizzaro Reyes* this Court, like many others, rightly found that 8 U.S.C. s. 1225(b)(1)(A)(i) and (ii) did not apply to persons arrested far from the border. But there is one part of Section 1225 (that was not discussed in *Pizzaro Reyes* because it was not relevant there) that states that in carefully limited circumstances the Government may file expedited removal petitions against persons living within the US. But that same provision (“the Designation Provision”) specifically states the Government may *not* file expedited removal petitions against a person who was paroled into the US. That crucial provision reads as follows:

**(iii) Application to certain other aliens**

**(I) In general**

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

**(II) Aliens described**

An alien described in this clause is an alien who is *not* described in subparagraph (F)[Cuban immigrants arriving by air], *who has not been admitted or paroled into the United States*, and who has *not*

affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

8 U.S.C. s. 1225(b)(1)(A)(iii)(emphasis added).

Because it speaks in a passive voice, uses the present perfect tense, and defines who may be subjected to expedited removal by saying who is not subject to it, the Designation Provision is not a model of legislative drafting. But as the United States District Court for the Southern District of New York concluded after an extended analysis, the basic meaning the statute is nevertheless clear:

The statute is therefore most sensibly read to exclude from the expedited removal provisions in Section 1225(b)(1) those noncitizens who were admitted to the United States, were at any time paroled into the United States, or who resided in the United States for over two years. As to each of those three groups, the noncitizen has established a presence in the country, and in each instance then Congress made the decision that they should be subject to the standard removal procedures enshrined in Section 240—not the expedited provisions in Section 1225(b)(1).

*Qasemi v. Francis*, 2025 WL 3654098, at \*9 (S.D.N.Y. Dec. 17, 2025).

For this case—and for the 500,000 or so other Cubans, Nicaraguans, Haitians and Venezuelans who entered the US on parole—the Designation Provision’s exception for those who had been paroled is of decisive significance because it *specifically states that the Government may not designate Evelin and Santiago Perez for expedited removal because they were paroled into the United States.*

Recognizing the force of that claim, the Huffman Memo (Ex. 1), the Notice in the Federal Register (Ex. 2), and the Respondents' Brief (ECF No. 10, Page ID.121-122), assert that if the paroles are summarily cancelled, the DHS may proceed with expedited removal. As will be seen, the revocation in this case could not cancel anything because the "notice" of cancellation violated the Petitioner's due process rights (see *infra*, at 19-22).

More fundamentally, many courts agree with *Qasemi* in holding that "The Designation Provision forbids the expedited removal of non-citizens who have, at any point in time, paroled into the United States". *Coal. for Humane Immigrant Rts. v. Noem*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2192986, at \*22-23 (D.D.C., Aug. 1, 2025); *Rodriguez-Acurio v. Almodovar*, \_\_\_ F. Supp.3d \_\_\_, 2025 WL 3314420 (E.D.N.Y., Nov. 28, 2025)(statute prohibits "expedited removal of noncitizens who have been, at any point in time, paroled into the United States"): *Salgado Bustos v. Raycraft*, 2025 WL 3022294, at \*6 (E.D. Mich. Oct. 29, 2025)(Edmunds)(statute does not "authorize expedited removal of noncitizen [parolees] ...regardless of the status of that parole"); *E.V. v. Raycraft*, 2025 WL 2938594, at 3? \*4 (N.D. Ohio Oct. 16, 2025)(statute forbids the expedited removal of noncitizens who have been paroled at any time); *Patel v. Tindall*, 2025 WL 2823607, at \*4-5 (W.D. Ky. Oct. 3, 2025)(same); *Aviles-Mena v. Kaiser*, 2025 WL 2578215, at \*4 (N.D. Cal. Sept. 5, 2025)(same).

The First Circuit is only court to have seemingly reached a different conclusion in the context of evaluating the likelihood of success on a request for a preliminary injunction. See *Doe v. Noem*, 152 F. 4<sup>th</sup> 272 (1<sup>st</sup> Cir. Sept. 12, 2025). But the analysis in *Doe* was at best summary and, as far as counsel can determine, no case has followed it or even cited it with approval.

There are many reasons that the decisions are nearly unanimous. To begin with, *Noem* and *Doe* recognize that as a matter of “pure semantics,” the language of the Designation Provision is ambiguous and could refer to a parole granted at a specific time in the past or to a status that existed at the time the removal petition was filed. *Noem*, at \*22, *Doe*, at 288. But while *Doe* ends its analysis at that point, *Noem*, *Qasemi* and the other cases cited above go on to analyze in detail the statute with the benefit of all the canons of construction. Thus, as *Noem*, held, the statute’s pairing or “paroled” with “admitted” (which is generally understood to be a decision made a particular point in time) strongly suggests that “paroled” also refers to the decision to grant a person a parole without regard to whether the parole is still in effect. *Id.*, at 23.

Similarly, as *Qasemi*, *Noem* and other cases rightly recognized that the expiration or cancellation of a parole does not render the parole void *ab initio*, and thus it is entirely consistent to hold that a person is entitled to the protections of Section 1226 because they lawfully lived in the country for a certain time.

Furthermore, the parole exception in the Designation Provision is a crucial limit on the Government’s ability to seek expedited removal against persons who entered the country lawfully—and if the Government can eliminate that protection by summarily cancelling the parole, then a crucial limit on Government’s power to designate persons for expedited removal has been reduced to a nullity.

Finally, if the Designation provision is construed so that a revoked parole does not shield the former parolee from expedited removal and thus mandatory detention, then a half million more people who resided in U.S. are now subject to prolonged mandatory detention, raising the profound constitutional questions that are attached to that detention (see *infra.*, at 22-23) If, on the other hand, the Designation Provision is construed, as almost every case had construed it, to hold that a person who received a parole is shielded from expedited removal even after that parole expires or is terminated, then that constitutional question need not be addressed, at least as to those who entered with permission.

As the Supreme Court has held, it is a “cardinal principle” that a court must “first ascertain whether a construction of the statute is fairly possible by which [a constitutional] question may be avoided,” and if it is, to construe the statute in a way that avoids that question. *Crowell v. Benson*, 285 U.S. 22, 62 (1932). If there was any doubt that the Designation Provision protects those whose paroles have expired or been terminated—and the Petitioners believe that there is no such doubt—this

Court should nevertheless construe the Provision in that way to avoid the question of the constitutional rights of a half million people who were authorized to enter the country and were then slammed into prison when the Administration decided to attempt to force them to abandon their claims by leaving the country.

**C. The DHS's other claims that it may file an expedited removal petition against persons who were paroled into the United States have no merit.**

1. *The DHS's statutory claims.*

In its brief, the DHS offers further arguments based on the parole statute, the DHS's own regulations, and some *dicta* in a Supreme Court Opinion. We will respond to those arguments in that order.

On page 10 of its Brief (ECF No. 10, Page ID.121), the DHS claims that it may subject the Petitioners to expedited removal and mandatory detention because the statute governing parole states the following:

...[W]hen then the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C.A. § 1182(d)(5)(A)

As will be seen in the next section, the DHS has not shown that the purposes of parole have been served or that it notified the Petitioners of the termination in any way, much less a way that complied with the statute or with the Due Process Clause.

But even if the Department had met those standards for terminating the parole, the question is whether the statutory words to “return the parolee to the custody from which he was paroled” means that the Petitioners should be returned to custody under Section 1226—in which case they are entitled to a bond—or does it mean they should be returned to custody under Section 1225 in which they will languish in prison until their case is finally decided?

The only possible answer to that question is that if the termination of parole is valid—and it is not—the Petitioners should be returned to custody under Section 1226 because the Designation Provision, 8 U.S.C. s. 1225(b)(1)(A)(iii) is the more recent and specific provision and it must control over parole provisions that trace their origins to the early 1950s.

As described in *Qasemi*, persons remanded to a bond under Section 1226 are considerably less free than those parole under Section 1182(d)(5), 2025 WL 3654098, at \*11, but they are also far freer than persons in mandatory detention under expedited removal.

2. *The DHS’s regulatory claims.*

The Respondent’s Brief asserts that under 8 C.F.R. s. 1.2, a person who had been on parole is still an “arriving alien,” but as set forth at length in *Noem*, other DHS regulations seemingly contradict that claim and any implication that the

regulation or the statute require that a former parolee to be thrown into mandatory detention. *Noem*, at 24-25, citing 8 C.F.R. s. 235.3(b)(6) and other DHS regulations.

Moreover, none of the DHS regulations about expedited removal and the effect of parole on that procedure were ever tested because no President before Trump had ever filed an expedited removal petition against a person who had entered the U.S. on parole. See history of designations in *Make the Rd. New York v. McAleenan*, 405 F. Supp. 3d 1, 16-19 (D.D.C. 2019)(Kentangi Brown-Jackson, J), *rev'd and remanded on other grounds sub nom. Make the Rd. New York v. Wolf*, 962 F 3d 612 (D.C. 2020).

In any event, the Court need not grant deference to the DHS's construction of its own authority. *Loper Bright Enters v. Raimondo*, 603 U.S. 369 (2024). The statute's words control and to the extent that Rule 1.2 and any other regulations contradict the statute, the regulations are *ultra vires*. *Noem*, at \*25.

3. *The DHS claims based on dicta.*

The DHS also relies on Supreme Court language describing the so-called entry fiction. Thus, it says, “[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Dept. of Homeland Sec. v. Thuraissigiam* 591 U.S. 103, 139 (2020), citing, *inter alia.*, *Leng May Ma v. Barber*, 357 U.S. 185 (1958). But *Thuraissigiam* did not consider the Designation Provision,

and while it said that mere length of a stay in the country could not legally change a person's *status*, it did not say the length of stay cannot change the removal procedures that can be used because it is undisputed that persons who enter without inspection may not be subjected to expedited removal if they can show that they have been continuously present in the country for the last two years.

### **III. THE SUSPENSION OF PAROLE, ARREST AND MANDATORY DETENTION OF THE PETITIONERS DEPRIVED THEM OF THEIR LIBERTY WITHOUT DUE PROCESS OF LAW.**

#### **A. The DHS's non-existent or farcical notice of the revocation of parole deprived the Petitioners of due process of law.**

As the Supreme Court held in a case involving a Cuban parolee, “[e]ven one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments].” *Mathews v. Diaz*, 426 U.S. 67, 75 n. 7 (1976).

In two ways, however, the Respondents have denied the Petitioners of Due Process of Law. First, they have rescinded parole with little or no notice, no hearing of any kind, and no consideration of their individual circumstances in violation of DHS's own rules. Second, they have subjected the Petitioners to a regime of indefinite detention with no possibility of bail.

On the first issue, Judge Jonker of the Western District of Michigan is one of many judges who considered a case of a Venezuelan immigrant whose parole was

summarily terminated by “a blanket notice of parole” given to non-citizens throughout the country. *Martinez v Raycraft*, 2025 WL 3511093 (W.D. Mich., Dec. 8, 2025). As that Court noted, DHS may, as in this case, grant paroles “for urgent humanitarian reasons or significant public benefit,” but the decisions to do so must be made “on a case-by-case basis.” *Id.*, Slip Op. at \*6, citing 8 U.S.C. s. 1225(d)(5)(A). Under the statute and the DHS’s regulations, the DHS may terminate the parole under the following procedure:

...[U]pon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien...

8 C.F. R. s. 212(e)(2)(i)

*Martinez* concluded that for two reasons the DHS had failed to follow the applicable statutory and regulatory provisions in terminating Mr. Rodriguez’s parole. First, it failed to provide any evidence that the “humanitarian reason or public benefit that justified the Petitioner’s parole no longer exists. *Martinez*, Slip Op., at \*5. And second, the Court held that just as a grant parole must be made on a “case-by-case basis,” so, too, “revocation of parole requires a case-by-case assessment to comply with the statute.” *Id.*, at \*6, citing *Mata Valasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D. N.Y. 2025); *Y-Z-L-H v. Bostock*, 792 F Supp. 3d 1123, 1137-1147 (D. Or. 2025), *Munoz Materano v. Arieta*, \_\_\_ F. Supp.

3d \_\_\_, 2025 WL 2630826, at \*14–17 (S.D.N.Y. Sept. 12, 2025) and other authorities. And the blanket notice of revocation in that case—which is more than what was received by the Petitioners in this case—did not “constitute a case-by-case determination. *Id.*, Slip. Op. at \*6.

The Court continued by stating that an agency’s failure to follow its own regulations may violate an individual’s right to due process of law, *Id.*, citing *inter alia.*, *Wilson v. Comm’r of Soc. Sec.*, 378 F. 3d 541, 545 (6<sup>th</sup> Cir. 2004), and it concluded that the DHS had violated the petitioner’s due process rights in the case before it. *Martinez*, Slip Op. at \*7.

Judge Maloney reached the same conclusions in *Quintero-Martinez v. Raycraft*, 2025 WL 3649515, \*5-6 (W.D. Mich. Dec. 17, 2025). So, too, did the decisions cited in those cases and numerous other decisions across the country.

As in the cases cited above and in the cases upon which those decisions relied, the DHS violated the Petitioners’ rights to Due Process because by providing them with no notice and no individualized consideration of their circumstances. Indeed, while the Notice published in Federal Register said that there would be a means by which a half million people could seek individual exceptions (Ex. 3, at 90 Fed. Reg. at 13612), no one knows what the procedure is or how one could invoke it.

**B. DHS’s arrest and indefinite confinement of the Petitioners with no possibility for bail denies the Petitioners due of process of law.**

Finally, especially as to persons residing in the country, the entire mandatory detention regime of expedited removal violates an immigrant’s right not to be deprived of liberty without due process of laws.

At the “heart” of the Fifth Amendment’s due process clause is “the freedom from imprisonment—government custody, detention, and other forms of physical restraint.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Depriving a person of their liberty is only permissible as punishment for crimes, or in “certain special and narrow nonpunitive [i.e. civil] circumstances.” *Id.* (quotation omitted). That due process guarantee extends to noncitizens regardless of “whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.<sup>1</sup>

Civil immigration detention is not punishment for a crime. Thus, it can only be justified “where a special [non-punitive] justification . . . outweighs the individual’s constitutionally protected interest” in liberty—usually only by a finding that such detention is necessary to prevent their flight or protect against dangers to the community. *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also United States v.*

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<sup>1</sup> While the government may argue that due process protections are diminished for people who are apprehended while crossing the border, DHS permitted the Petitioners to enter the U.S. and they have lived here peaceably for over a year. As the Supreme Court has long held, those who are within the United States, no matter how they got here, are protected by the Due Process Clause. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958).

*Salerno*, 481 U.S. 739, 750 (1987). A hearing on whether such a special justification necessitates civil detention is the most basic protection required by the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Addington v. Texas*, 441 U.S. 418, 428 (1979). And the nature of that hearing is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976) which weighs (1) the nature of “the private interest” being deprived; (2) “the risk of erroneous deprivation” and (3) the “fiscal and administrative burdens” posed by providing additional process. *Id.* All three *Mathews* factors favor these Petitioners.

As to the private interest, Petitioners invoke “the most elemental of liberty interests—the interest in being free from physical detention by one’s own government *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Meanwhile, the government’s interest in detaining Petitioners is limited to ensuring their appearance at their future immigration proceedings (i.e., “flight risk”) and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690. But because Respondents denied Petitioners a proper bond hearing, “there is nothing in the record demonstrating that [Petitioners are] a flight risk or a danger to the community.” *Lopez Benitez*, 2025 WL 2371588, at \*12. Therefore, the risk of erroneously depriving Petitioners of physical freedom is unbearably high. *See Lopez-Campos*, 2025 WL 2496379, at \*9

(“the risk of erroneously depriving [petitioner] of his freedom is high if the IJ fails to assess his risk of flight and dangerousness.”).

### CONCLUSION

For the reasons stated, the Petitioners request that this Court grant their request for a Writ of Habeas Corpus. As the Petitioners were free on parole for over a year and as their confinement was unlawful from their arrest forward, the Petitioners ask for immediate release subject only to the terms of parole that they have always complied with. See *Castano-Nova v. Department of Homeland Security*, \_\_\_F.3d\_\_\_, 2025 WL 3552514 at \*2, n. 2 (7<sup>th</sup> Cir. 2025).

By the Petitioners’ attorneys,

/s/ George B. Washington

GEORGE B. WASHINGTON (P 26201)

SCHEFF & WASHINGTON, PC

24525 Southfield Road—Ste 270

Southfield, MI 48075

313-963-1921

313-715-4886 C (Please use this number)

[scheff915@gmail.com](mailto:scheff915@gmail.com)

Dated: January 7, 2026

**CERTIFICATE OF SERVICE**

The undersigned served a copy of this Motion and Brief on counsel for the Respondent by filing it with ECF and by sending a copy via email to Assistant US Attorney Zak Toomey at the email address he provided to counsel.

s/ George B. Washington

Dated: January 7, 2026